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FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

Dec 27, 2023

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

JOSEPH A. PAKOOTAS, an individual  
and enrolled member of the Confederated  
Tribes of the Colville Reservation; and  
DONALD R. MICHEL, an individual and  
enrolled member of the Confederated  
Tribes of the Colville Reservation; and  
THE CONFEDERATED TRIBES OF  
THE COLVILLE RESERVATION,

Plaintiffs,

*and*

THE STATE OF WASHINGTON,  
Plaintiff-Intervenor,

v.

TECK COMINCO METALS, LTD., a  
Canadian corporation,

Defendant.

No. 2:04-CV-00256-SAB

**ORDER GRANTING JOINT  
MOTION AS TO CERTAIN  
AFFIRMATIVE DEFENSES**

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**ORDER GRANTING JOINT MOTION AS TO CERTAIN  
AFFIRMATIVE DEFENSES #1**

1       A motions hearing was held in the above-captioned matter on December 14,  
2 2023 in Spokane, Washington. Defendant was represented by Deborah Baum,  
3 Amanda Halter, Deanna Willman, and Ashleigh Myers. Plaintiff Pakootas and the  
4 Confederated Tribes of the Colville Reservation were represented by Paul Dayton.  
5 Intervenor-Plaintiff State of Washington was represented by Joshua Osborne-Klein  
6 and Dylan Stonecipher.

7       Pending before the Court was Plaintiffs' Motion for Partial Summary  
8 Judgment on Certain Affirmative Defenses, ECF No. 2771, Defendant's Motion  
9 for Partial Summary Judgment on Plaintiffs' Joint Natural Resource Damage  
10 Claims, ECF No. 2774, and Defendant's Motion for Partial Summary Judgment on  
11 the Colville Tribes' "Tribal Service Loss" Claims, ECF No. 2777.

12       At the hearing, the Court heard oral argument on Defendant's two motions  
13 for partial summary judgment. The Court took both motions under advisement. As  
14 to Plaintiff's motion for partial summary judgment, Defendant indicated that the  
15 motion did not need to be argued because Defendant no longer wished to utilize  
16 affirmative defenses 10 – 16 in answer to CCT's Fourth Amended Complaint and  
17 affirmative defenses 15 – 21 in answer to Washington State's Fifth Amended  
18 Complaint. *See* ECF Nos. 2117 and 2569. The Court interpreted this as stipulation  
19 and granted Plaintiffs' motion.

20       Accordingly, **IT IS HEREBY ORDERED:**

21       1. Plaintiffs' Motion for Partial Summary Judgment on Certain  
22 Affirmative Defenses, ECF No. 2771, is **GRANTED**.

23       2. Affirmative Defenses 10 – 16, listed in ECF No. 2117, are  
24 **DISMISSED**.

25                  No. 10 – Harm Was Not Caused by Defendant

26                  No. 11 – Any Harm Suffered Was Caused by Plaintiff/Third-  
27                  Parties

28                  No. 12 – Disposal and Release not at Same Facility

**ORDER GRANTING JOINT MOTION AS TO CERTAIN  
AFFIRMATIVE DEFENSES #2**

1 No. 13 – Joint and Several Liability Not Permitted

2 No. 14 – Apportionment

3 No. 15 – Release Caused by a Third Party

4 No. 16 – Release Permitted by Law

5 3. Affirmative Defenses 15 – 21, listed in ECF No. 2569, are

6 **DISMISSED.**

7 No. 15 – Harm Was Not Caused by Defendant

8 No. 16 – Any Harm Suffered Was Caused by the State/Third  
9 Parties

10 No. 17 – Disposal and Release Not at Same Facility (CERCLA)

11 No. 18 – Joint and Several Liability Not Permitted

12 No. 19 – Liability Proportionate to Apportionment

13 No. 20 – Release Caused by a Third Party

14 No. 21 – Release Permitted by Law

15 **IT IS SO ORDERED.** The District Court Clerk is hereby directed to enter  
16 this Order and to provide copies to counsel.

17 **DATED** this 27th day of December 2023.



21 Stanley A. Bastian

22 Stanley A. Bastian  
23 Chief United States District Judge  
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**ORDER GRANTING JOINT MOTION AS TO CERTAIN  
AFFIRMATIVE DEFENSES #3**